



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0483]

RIN 1625-AA09

Drawbridge Operation Regulation; Chincoteague Bay, Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs SR 175 Bridge across Lewis Channel and Black Narrows, mile 3.5 at Chincoteague, VA. The change will eliminate the need for the current operating schedule and return the bridge to open on demand. The change does not include the last consecutive Wednesday and Thursday in July for the annual Pony swim.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG 2014-0483 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Kashanda Booker, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757-398-6227, e-mail Kashanda.l.booker@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On January 26, 2015, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, “Drawbridge Operation Regulation; Chincoteague Bay, Chincoteague, VA” in the Federal Register (80 FR 3933). We received no comments on this rule. No public meeting was requested and none was held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The purpose of this rule is to allow for a less restrictive operating schedule while still balancing the needs of the marine and vehicular traffic. The draw of the SR 175 Bridge will open on demand in accordance with 33 CFR 117.5 except: from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened for the annual Pony swim.

IV. Discussion of Comments, Changes and the Final Rule

The bridge owner, Virginia Department of Transportation (VDOT), who owns and operates SR 175 Bridge across Lewis Channel and Black Narrows, mile 3.5, at Chincoteague, VA has requested to change 33 CFR 117.1005.

In 2011, a new single-leaf bascule bridge was constructed on a new alignment replacing the former swing-type bridge that was located downstream from the Chincoteague

maritime community. The new alignment resulted in boaters having an improved channel access and the number of necessary bridge openings reduced.

The vertical clearance of the single-span bascule bridge is 15 feet above mean high water in the closed position and unlimited in the open position. The horizontal clearance is 60 feet between fender systems.

The current operating schedule allows the draw to open on demand from midnight to 6 a.m., and every one and a half hours from 6 a.m. to midnight (at 6 a.m., 7:30 a.m., 9 a.m., 10:30 a.m., 12 p.m., 1:30 p.m., 3 p.m., 4:30 p.m., 6 p.m., 7:30 p.m., 9 p.m., 10:30 p.m., and midnight); except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened. This has been the regular operating schedule since November 16, 2006.

Based on the decreased number of bridge openings since 2011, the Chincoteague maritime community and the Accomack County Board of Supervisors favored a less restrictive opening schedule by proposing a test deviation from scheduled openings to an “on demand” schedule while still balancing the needs of marine and vehicular traffic. The monthly vessel openings at the SR 175 Bridge submitted by VDOT are as follows:

BRIDGE OPENING COUNTS

AP R 201 3	MA Y 2013	JUN E 2013	JUL 201 3	AU G 2013	SEP T 2013	OC T 201 3	NO V 2013	DE C 201 3	JAN 201 4	FEB 201 4	MA R 2014	AP R 201 4
1	4	7	7	7	6	7	3	2	0	0	0	3

The bridge logs revealed that from April 2013 to April 2014, the SR 175 Bridge had experienced only 47 total vessel openings.

The SR 175 Bridge is the only vehicular connection between the mainland and Eastern Shore of Virginia and Chincoteague Island. Tourism is a dominant industry of Chincoteague Island with activities taking place in the Town of Chincoteague, Chincoteague Island and Assateague Island.

From August 4, 2014 to November 3, 2014, the draw of the SR 175 Bridge, mile 3.5, at Chincoteague, opened on signal in accordance with the general operating regulations set out at 33 CFR 117.5.

The monthly vessel openings at the SR 175 Bridge submitted by VDOT are as follows:

Bridge Opening Counts

September 2014	October 2014	November 2014
3	5	1

Based on the bridge log and discussions with the local community, allowing the bridge to return to an open on demand schedule except for the Pony swim will meet the reasonable needs to navigation and vehicular traffic. Therefore, 33 CFR 117.1005 will be amended to only deviate from the on demand schedule during the Pony swim.

V. Regulatory Analysis

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This rule will make a regulatory burden less restrictive by allowing for the bridge to open on signal for the majority of the year. This rule takes into account the reasonable needs of navigation while taking into account vehicular traffic.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this final rule would not have a significant economic impact on any vessel owner or operator.

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard

will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any

one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise 117.1005 to read as follows:

§ 117.1005 Chincoteague Channel.

The draw of the SR 175 Bridge, mile 3.5, at Chincoteague shall open on demand; except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened.

Dated: March 29, 2016

Stephen P. Metruck
Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District

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